

Attachment G

1400 North Royal Street
Alexandria, VA 22314
T 703 838 8249 U www.mirant.com

April 17, 2007

The Honorable Timothy M. Kaine
Governor of Virginia
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219



Mr. David K. Paylor, Director
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219
Dear Governor Kaine and Mr. Paylor:

On behalf of Mirant Potomac River Station, LLC and pursuant to Virginia Code § 2.2-4007.K., Mirant Potomac River Station, LLC is filing this petition requesting an opportunity for oral and written submittals regarding changes with substantial impact made to the proposed Regulation for Emission Trading found at 9 VAC 5-140 1010 *et seq.*, which was published in the Virginia Register on March 19, 2007. This petition is signed by at least twenty-five persons.

Summary of Changes

9 VAC 5-140-1061 and 1062 of the final rule were not in the proposed rule published on July 10, 2006 in the Virginia Register. Here is a black line of 9 VAC 5-140-1061 from the final rule against provisions of 9 VAC 1060 H. in the proposed rule:

9 VAC 5-140-1061. Nonattainment and requirements.

HA. The following requirements apply to any CAIR NOx unit ~~or~~
~~CAIR NOx source~~ located in a nonattainment area designated in
9 VAC 5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged in to the atmosphere from any CAIR NOx unit ~~or~~
~~CAIR NOx source~~ any NOx emissions in excess of the NOx
annual emissions cap. For each control period, the NOx annual
emissions cap shall be equal to the number of NOx allowances
(expressed in tons) allocated for the CAIR NOx unit ~~or~~ CAIR

The Honorable Timothy M. Kaine
Mr. David K. Paylor
April 17, 2007
Page 2

NO_x source for the control period in accordance with 9 VAC 5-140-1420.

2. A CAIR NO_x unit ~~or CAIR NO_x source~~ shall be subject to the requirement under subdivision 1 of this subsection for the control period starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9 VAC 5-140-1700 B C 1, 2, or 5 and for each control period thereafter.

3. ~~No NO_x allowances other than those issued to a CAIR NO_x unit or CAIR NO_x source in accordance with 9 VAC 5-140-1420 may be used to demonstrate compliance with the emission standard in subdivision 1 of this subsection. Compliance with the NO_x annual emissions cap in subdivision 1 of this subsection shall be demonstrated annually, based on a comparison of (i) the total NO_x emissions (expressed in tons) from each CAIR NO_x unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-1700 et seq.) of this part and (ii) the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x unit for the preceding control period in accordance with 9 VAC 5-140-1420. However, this subsection does not otherwise prohibit any CAIR NO_x unit or CAIR NO_x source from participating in the CAIR NO_x Annual Trading Program NO_x annual emissions cap.~~

[4. If the board determines that the provisions of this subsection may be waived for a CAIR NO_x unit or CAIR NO_x source without the CAIR NO_x unit or CAIR NO_x source causing or contributing to a violation of any air quality standard or a nonattainment condition, the board may issue a state operating permit granting relief from the requirements of this subsection. The board may include in any permit issued to implement this subdivision any terms and conditions the board determines are necessary to ensure that the CAIR NO_x unit or CAIR NO_x source will not cause or contribute to a violation of any air quality standard or a nonattainment condition. The owner or operator of a CAIR NO_x unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the NO_x annual emissions cap set forth in subdivision 1 of this subsection or (ii) a NO_x emissions

The Honorable Timothy M. Kaine
Mr. David K. Paylor
April 17, 2007
Page 3

compliance demonstration in accordance with 9 VAC 5-140-1062.]

9 VAC 5-140-1062 was added to the final rule in its entirety, it has no counterpart in the proposed rule.

9 VAC 5-140-1062. NOx emission compliance demonstration.

A. Compliance with the NOx annual emission cap set forth in 9 VAC 5-140-1061 A 1 may also be achieved through a NOx emissions compliance demonstration meeting the requirements of this section.

B. The NOx emissions compliance demonstration submitted pursuant to this section may include one or more CAIR NOx units in a CAIR NOx source under common control and located in the nonattainment area.

C. NOx emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete NOx emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR NOx unit in the NOx emissions compliance demonstration.

2. The number of NOx allowances (expressed in tons) allocated for each CAIR NOx unit for the preceding control period.

3. The total NOx emission (expressed in tons) from each CAIR NOx unit during the preceding control period.

4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstration with the following equation:

The Honorable Timothy M. Kaine
Mr. David K. Paylor
April 17, 2007
Page 4

$$\sum_{i=1}^n (ANOE_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR NO_x units in the NO_x emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR NO_x units.

i is a CAIR NO_x unit identified in subsection B of this section.

ANOE (Actual Nitrogen Oxides Emissions) are the total NO_x emissions (expressed in tons) from each CAIR NO_x unit during the preceding control period, as determined in accordance with Article 8 (9 VAC 5-140-1700 et seq.) of this part.

X is the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x unit for the preceding control period in accordance with 9 VAC 5-140-1420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-1700 et seq.) of this part shall be used to determine compliance by each CAIR NO_x source with the NO_x annual emissions cap set forth in 9 VAC 5-140-1061 A.

Similar changes were made to 9 VAC 5-140- 2061 and 2062 relating to the NO_x ozone season allowance requirements in nonattainment areas. Sections 3061 and 3062 relating to SO₂ emission requirements in nonattainment areas were added in their entirety. The proposed rule had no provisions concerning SO₂ emission requirements in non attainment areas.

Significant Impacts


The rules for NO_x annual emissions, NO_x ozone seasonal emissions and SO₂ emissions require the operator of an electrical generating unit to have one allowance for each ton of NO_x emitted from that unit during the relevant time period. Allowances are initially allocated to each unit based on past emissions. The changes listed above are significant because while they allow the trading of allowances among units at the same source they now purportedly prohibit trading of allowances among the sources that are under the same ownership and control in the nonattainment area as would have been allowed in the proposed rule considered by the Board at its meeting. More importantly, the Board removed language in the proposed rule that would

The Honorable Timothy M. Kaine
Mr. David K. Paylor
April 17, 2007
Page 5

have allowed for a waiver from the prohibition on trading allowances to comply with the rules. Under this new language, NO_x emissions from a source in a nonattainment area are purportedly capped (*i.e.*, they purportedly cannot exceed the allowances allocated to the plant under other provisions in the rule that were not changed). The allowances are allocated from a fixed budget to each unit, each year, based on the emissions of that plant relative to all other electric generating units in Virginia. Due to demand growth, the emissions of plants outside nonattainment areas will increase emissions. Because the emissions from plants in nonattainment areas are purportedly capped, and they purportedly have no way to increase allowances, the allowances allocated to plants in nonattainment areas will shrink over time, potentially resulting in the shutdown of the plant.

Va. Code § 2.2-4007.K. requires that, when such a petition is filed, the Agency shall suspend the regulatory process for thirty days to solicit additional public comments. We look forward to working with the Board and DEQ in amending these regulations so that they are consistent with the record, the Board's statutory authority, environmental protection, sound science, reliable electricity and recent settlements of litigation among the Commonwealth of Virginia, United States Environmental Protection Agency, State of Maryland and Mirant.

Sincerely,



Enclosure